

**SANITIZED DEC. – 02-534 U – BY – GEORGE V. PIPER – ISSUED – 7/18/03 –
SUBMITTED FOR DECISION – 03/27/03**

SYNOPSIS

PURCHASERS' USE TAX – BURDEN OF PROOF MET IN PART –

Petitioner showed that a portion of the assessment was erroneous, as required by W. Va. Code § 11-10A-10(e), in that a major part of its business did not constitute contracting.

FINAL DECISION

A Tax Examiner with the Field Auditing Division of the West Virginia State Tax Commissioner's Office conducted an audit of the books and records of the Petitioner.

The Director of this Division of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner.

This assessment was for the period of April 1, 1999 through March 31, 2002, for tax, interest, through May 31, 2002.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked, August 14, 2002, the Petitioner timely filed a petition for reassessment.

At the conclusion of the hearing, the administrative law judge directed that the record be kept upon for a period of time so that Petitioner could supply proof of various amounts of sales tax, which it paid with respect to its contracting activities.

FINDINGS OF FACT

1. Petitioner is engaged in the business of fabricating and/or producing signage, which it sells to individuals, corporations, and the consumers, some of which it installs on its own.

2. Some of the signs were admittedly capital improvements because the same required foundations and other means of permanent attachment, while the remainder consisted of much smaller installations utilizing small drill holes, screws and small bolts.

3. Petitioner did not pay any use tax at all during the audit period.

4. Upon review of Petitioner's invoices submitted at the hearing, it was determined that between seventy-five (75) percent and eighty (80) percent of Petitioner's business did not constitute contracting.

DISCUSSION

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e).

In this case, Petitioner did show by clear and convincing evidence that a portion of the assessment was indeed erroneous because the same did not constitute contracting.

CONCLUSION(S) OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See § 11-10A-10(e).

2. The Petitioner-taxpayer in this matter has carried the burden of proof, in part, with respect to this issue.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchasers' use tax assessment issued against the Petitioner for the period of April 1, 1999 through March 31, 2002,

should be and is hereby **MODIFIED** in accordance with the above Conclusion of Law for tax, interest, on the revised tax, updated through July 31, 2003.